

**CALIFORNIA COASTAL COMMISSION**

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49th Day: May 10, 2002  
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Staff: ALB-LB  
Staff Report: June 20, 2002  
Hearing Date: July 8-12, 2002  
Commission Action:

**Item M 9f****STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-02-093

**APPLICANT:** Cannery Lofts, L.P.

**PROJECT LOCATION:** 500-519 30<sup>th</sup> Street and 2192, 2910, 2908 & 2906 Lafayette Avenue, City of Newport Beach (Orange County)

**PROJECT DESCRIPTION:** Construction of twenty-two (22) mixed-used, 32' high, 3-story structures and associated traffic and parking modifications, drainage/water quality improvements, hardscape and landscaping on four (4) waterfront lots along the Rhine Channel and eighteen (18) inland lots within a 1.44-acre area of Cannery Village. Approximately 1425 cubic yards of grading (1400 cy fill and 25 cy cut) is proposed for site preparation and drainage purposes. A 6' wide public walkway is proposed along the existing bulkhead of the waterfront lots. The project also involves a subdivision of one lot into seven lots, re-creating the previous subdivision pattern in the subject area.

**LOCAL APPROVALS RECEIVED:** Approval of Site Plan Review 2001-002, Use Permit 2001-022, Tentative Tract Map 2001-001, CRDP 2001-003, Traffic Study 2001-004 and adoption of Mitigated Negative Declaration by Newport Beach City Council on March 12, 2002.

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**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing to construct a mixed-use development consisting of 22 individual buildings in the Cannery Village area of Newport Beach. Each of the 22 buildings will provide commercial space on the ground floor and a residential unit on the upper two floors. Parking will be provided on site through residential garages and tandem commercial parking. The site is currently vacant. Demolition of the previously existing structures was approved pursuant to CDP 5-02-096. The major issues of the staff report include parking, land use, public access, community character and water quality.

Staff recommends the Commission **APPROVE** the proposed development with six (6) special conditions requiring 1) acknowledgement of land use restrictions through a future improvements condition; 2) submittal of a revised Parking Management Plan, 3) submittal of a Construction Best Management Practices Plan, 4) submittal of a Water Quality Management Plan; 5) preservation of public views and 6) submittal of a public improvements signage plan.

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**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan (LUP), Cannery Village/McFadden Square Specific Plan and CDP Applications 5-02-096 (Cannery Lofts), 5-01-104 (Flutter), and 5-00-056 (Weeda).

**EXHIBITS:**

1. Vicinity Map
2. Parcel Map
3. Project Plans
4. Tract Map 16292
5. Correspondence from applicant received May 15, 2002
6. Views of Rhine Channel from public vantage points
7. Correspondence from ORACLE received June 18, 2002
8. Photos of Surrounding Development

**I. STAFF RECOMMENDATION:**

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

**MOTION:**

***I move that the Commission approve CDP #5-02-093 pursuant to the staff recommendation.***

Staff recommends a **YES** vote. This will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT WITH CONDITIONS:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS:**

#### **1. Future Development**

- A. This permit is only for the development described in Coastal Development Permit No. 5-02-093. Land uses for the lots subject to this permit must conform to those set forth in the Newport Beach certified LUP and any future amendments, the currently applicable provisions of which are listed below:

##### **1. Recreational and Marine Commercial**

Uses permitted are as follows:

##### **I. Permitted uses: highest priority uses, not requiring a use permit.**

- A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.

1. Boat haul-out facilities
2. Commercial fishing facilities
3. Sport fishing establishments and fishing docks
4. Marinas
5. Marine construction
6. Boat rentals and charters
7. Retail marine sales
8. Marine service businesses
9. Dry boat storage

##### **B. Other permitted uses:**

1. Marine-related offices where services are offered to the general public
2. Visitor-serving retail

##### **II. Uses which require a Use Permit:**

- A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.

1. Manufacturing of marine uses
2. New boat construction
3. Marine service stations and gas docks
4. Yacht clubs

B. Other uses:

1. Social clubs
2. Commercial recreation
3. Drive-in facilities
4. Hotels and Motels
5. Restaurants

C. Uses which must be in conjunction with an incentive use occupying at least 40% of the site

1. General retail and service commercial uses
2. Professional and business offices
3. Light manufacturing

2. Retail and Service Commercial

Uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior citizen housing facilities. Office uses which do not provide services directly to the public shall be prohibited on the ground floor, but may be permitted on the second level or above where the ground level is occupied by a primary use.

- B. Except as provided in Public Resources Code Section 30610 and applicable regulations, any future development as defined in PRC section 30106, including but not limited to, a change in the density or intensity of land use shall require an amendment to Permit No. 5-02-093 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

2. Parking Management Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a revised plan for parking management and signage. The plan shall be prepared by a qualified professional and shall include the following:

1. Lot S8, as depicted in Exhibit 3, page 3 of the current staff report, shall be limited to a parking only area to serve the patrons of the Cannery Lofts development and to mitigate the loss of on-street parking in the subject area. No development, other than parking and landscaping, shall be allowed. A minimum of five (5) parking spaces shall be provided in a non-tandem configuration. Signage shall be posted to inform motorists of the parking availability and applicable restrictions of that lot.

The applicant shall submit two (2) sets of revised project plans reflecting the deletion of the mixed-use structure at Lot S8 and the creation of the new parking lot.

2. Tandem parking areas at the remaining 21 lots shall be clearly marked (i.e. signed or stenciled) for identification of customer and employee parking. Employees shall park in the interior spaces. Garages shall be limited to the exclusive use of the residents of the upper units.

The revised project plans shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions. The signs shall be clearly visible to motorists from the frontage street or alley.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of the first paragraph of subsection A (1) of this condition. The deed restriction shall include a legal description of the applicant's entire parcel that is the subject of this restriction. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Construction Best Management Practices Plan

- A **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Construction Best Management Practices Plan for the construction project site, prepared by a licensed professional, and shall incorporate erosion, sediment, and chemical control Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the adverse impacts associated with construction to receiving waters. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
  - a. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion.
  - b. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
  - c. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters.
  - d. All mechanized machinery shall be removed from the beach at the end of the working day. No storage of mechanized equipment is allowed on the beach.
  - d. No disturbance or use of areas below the mean high tide line is permitted for the construction of the proposed development.
  - f. Erosion control/sedimentation Best Management Practices (BMPs) shall be

used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and Newport Harbor.

- g. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
  - h. If the debris disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Implemented BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
  - a. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible.
  - b. The applicant shall develop and implement spill prevention and control measures.
  - c. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water.
  - d. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
  - e. Temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, wind barriers such as solid board fence, snow fences, or hay bales, and silt fencing.
  - f. Stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.
  - g. Prior to final inspection of the proposed project the applicant shall ensure that no gasoline, lubricant, or other petroleum-based product was deposited on the sandy beach or any beach facility. If such residues are discovered in the beach area the residues and all contaminated sand shall be properly removed and disposed in an appropriate facility.
  - h. These erosion control measures shall be required on the project site prior to or concurrent with the initial construction operations and maintained throughout the

development process to minimize erosion and sedimentation from the runoff waters during construction. The above requirements (Special Condition #3), as well as the below requirements found in Special Condition #4, shall be attached to all final construction plans.

- C. The permittee shall undertake development in accordance with the plans and construction schedule approved by the Executive Director pursuant to this condition. Any proposed changes to the approved plans or construction schedule shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

4. Water Quality Management Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Water Quality Management Plan (WQMP), including supporting calculations, written descriptions, and appropriate plans for the post-construction project site. The plan shall include, but is not limited to, the following requirements:

1. Water Quality Goals

- a. The WQMP shall be prepared by a licensed water quality professional and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to minimize, to the maximum extent practicable, the pollutant load of storm water and nuisance flow leaving the developed site.
- b. The plan shall be in substantial conformance with the "Runoff and Water Quality Management Plan for Cannery Lofts," which includes project proposals for "turfblock fields" on each lot, storm drain inserts, swale systems in the center of the roads, and oil, grit, and debris separator technology.
- c. The WQMP shall indicate how it shall minimize to the maximum extent practicable or eliminate the contribution of 303(d)-listed and TMDL-listed pollutants for Lower Newport Bay.
- d. As proposed, impervious surfaces shall be minimized to the maximum extent practicable.

2. Structural Treatment Best Management Practices (BMPs)

- a. Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- b. Runoff from all parking areas, roads, and driveways shall be collected and directed through a system of appropriate structural and/or non-structural BMPs. The filter elements shall be designed to minimize to the maximum extent practicable vehicular contaminants (oil, grease, automotive fluids, heavy metals), sediments, and floatables and particulate debris.

3. Source Control BMPs

- a. The applicant shall regularly sweep all parking areas and walkways in order to prevent dispersal of pollutants that might collect on those surfaces.
- b. All rooftop drainage shall be directed to vegetated or other permeable areas.
- c. All detergents and cleaning components used on site, outdoors, or where it has the potential to be dispersed by water shall comply with the following criteria: detergents shall be phosphate-free, biodegradable, and non-toxic to marine wildlife; amounts used shall be minimized to the maximum extent practicable; no fluids containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye shall be used.
- d. Spraying down or washing down impervious surfaces, including but not limited to parking areas, sidewalks, rooftops, or driveways, is prohibited unless the water used is directed through the sanitary sewer system or an appropriate structural BMP designed to reduce pollutants to the maximum extent practicable.
- e. Educational materials including, but not limited to, such topics as 1) water quality impairments of Lower Newport Bay and the Rhine Channel, 2) good housekeeping practices for residential, commercial, and boating water quality issues, and 3) structural and non-structural BMPs used on-site shall be distributed to future owners and/or tenants.

4. Inspection and Maintenance of BMPs

- a. All structural BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired, at the following minimum frequencies: (1) prior to October 15th each year; (2) after every major storm, and (3) at least twice during the dry season (between April 15 and October 15).
- b. Debris and other pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- c. The applicant shall submit a signed agreement verifying the party or entity responsible for maintenance of structural and non-structural BMPs for the life of the project. If the property or responsibility is transferred, conditions in the sales or lease agreement or any other sufficient document shall require the recipient to assume responsibility for the maintenance procedures certified in this permit.

- 5. It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification.

- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal



development permit unless the Executive Director determines that no amendment is required.

5. Preservation of View Corridors

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, revised elevation drawings for the Lafayette Street Units. Views of the Rhine Channel from Lafayette Avenue through view corridors shall be maximized. The drawings shall incorporate the following requirements:
1. The trellis feature depicted on Sheet A8 of the project plans shall either be removed or, if maintained, shall not be less than 95 percent transparent,
  2. The courtyard security gate shall be constructed of a transparent material, and
  3. The garage doors for the non-residential parking area shall remain open during daytime business hours.
- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Public Improvements Signage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a signage plan for the public improvements located at the 30<sup>th</sup> Street “mini-park” and the 6’ wide public walkway along the Rhine Channel bulkhead, which welcomes the public to utilize the public improvements. The plan shall include, at a minimum, the following components: a sample of each sign and a site plan depicting the location of each sign. The signs shall be clearly visible to motorists from the frontage street (Lafayette).
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

##### A. Project Location, Description and Background

###### Project Location

The project site is located in the Cannery Village area of the City of Newport Beach, County of Orange (Exhibits 1 & 2). As shown in the illustrative site plan below, eighteen (18) of the lots are located on the north and south sides of 30th Street, between Villa Way on the west and Lafayette Avenue on the east. The four (4) waterfront lots front on Lafayette Avenue and abut the Rhine Channel. The Cannery Village area is located between 32nd Street and 26th Street on the Balboa Peninsula. It is a mixed-use area with commercial, industrial, and residential uses. The City of Newport Beach has designated the Cannery Village area for a mixture of retail and commercial uses. In this district, residential development is allowed on the upper floors in conjunction with ground floor commercial usage.



The approximately 1.4-acre project site is currently vacant. The site was previously developed with a mix of older (approx. 40-50 years old) industrial, residential and marine commercial uses. The structures were dilapidated to the point of creating safety hazards. The Commission approved demolition of these structures and associated parking pursuant to CDP 5-02-096.

###### Project Description

The applicant is proposing to construct 22 commercial/residential buildings on 1.44 acres within the Cannery Village area (Exhibit 3). Approximately 1425 cubic yards of grading (1400 cy fill and 25 cy cut) is proposed for site preparation and drainage purposes. Hardscape improvements and drought-tolerant, non-invasive landscaping are proposed. The applicant proposes to subdivide one previously joined lot into seven lots along the north side of 30<sup>th</sup> Street, consistent with the original lot configuration. The City approved Tentative Tract Map No. 16292 as part of the local approval (Exhibit 4). The subdivision will result in the creation of 22 lots. The applicant intends to construct 22 separate structures, one on each of the 22 lots. Each individually owned structure will provide commercial space on the lower level and a residential unit above.

The 18 inland lots are designated Retail and Service Commercial (RSC) in the certified Land Use Plan (LUP). The 4 waterfront lots are designated Recreational and Marine Commercial (RMC) in the LUP. As such, the owners of each new structure will be required to operate commercial activities consistent with the City's land use requirements and the certified LUP. Land use will be discussed further in Section B.

Parking for each structure will be provided on site. Each residential unit will have a two-car garage. Employee and visitor parking for the commercial development will be provided in a tandem configuration. Vehicular access to the parking areas will be provided via driveways at the front of each building and through driveway and garage access from the alleys running along the rear of the structures on 30<sup>th</sup> Street. Parking will be discussed further in Section C.

Each of the 22 individual structures will be three-stories high and range in total size from 2560 square feet to 3380 square feet (residential and commercial square footage combined). The proposed structures will reach a maximum height of 32', thereby exceeding the City's 26' height limit. The development will incorporate the "cannery theme" design recommendations provided in the City's Cannery Village Specific Plan. Although the Specific Plan is not a part of the certified LUP, the City applied the design recommendations in approving the project currently before the Commission. The architectural theme identified in the Specific Plan includes *"the use of nautical and marine elements, the use of corrugated metal building materials and the attractive expression of mechanical equipment."* Issues have been raised by a community interest group regarding conformance with community character. Scenic and visual resources will be discussed further in Section D.

The project also includes changes to the street section, pavement and drainage of 30<sup>th</sup> Street from Villa Way to the Rhine Channel. The 30<sup>th</sup> Street right-of-way will remain the same and will maintain the existing top curb elevation; however, a new trench drain will be located in the center of the street that will be designed to drain to existing catch basins. The project also incorporates permeable driveway and parking areas through the use of turf block. Water quality will be discussed further in Section E.

Lastly, the project includes the dedication of a 6' wide public walkway along the Rhine Channel bulkhead and improvements to the street end at 30<sup>th</sup> Street. Improvements to the 30<sup>th</sup> Street end will provide a vertical accessway/"mini park" between Lafayette and the Rhine Channel. No modifications to the existing bulkhead are proposed. Boat slips adjacent to the bulkhead will be privately owned and maintained. No public docking will be permitted. The vertical accessway/park area at the end of 30<sup>th</sup> Street will be privately maintained, but will be available for unrestricted public access. Public Access will be discussed further in Section F.

#### Prior Commission Action in the Subject Area

On May 7, 2002, the Commission approved Coastal Development Permit 5-02-096 for demolition of all existing buildings and associated parking lots within the subject area, including 1 office building, 2 residences, 1 former bar, 2 warehouses, 1 industrial building and 2 boat storage yards on 16 lots. Approximately 25,785 square feet of gross floor area and 62,696 square feet of paved areas were approved to be demolished. No grading or new construction was proposed. All construction debris was approved to be disposed of at a landfill outside the coastal zone. The demolition was recently completed.

In May 2000, the Commission approved Coastal Development Permit 5-00-056 for construction of a new 5107 square foot, 33' high, 3-story mixed-use structure with 10 parking spaces on a vacant lot at 427 and 429 30<sup>th</sup> Street and 3009 Villa Way, in the same project vicinity as the currently

proposed project. In that case, the City had issued an emergency demolition permit to the owner and the existing structures were demolished in January 2000. Section 30005 (b) of the Coastal Act allows a local government to issue a nuisance abatement order. CDP 5-00-056 has since been issued and the building constructed.

## **B. Land Use**

Section 30222 of the Coastal Act states,

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City has an LUP and not a fully certified LCP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes policies that relate to development at the subject site. The "Commercial" section beginning on page 43 describes allowable land uses within the "Recreational and Marine Commercial" and "Retail and Service Commercial" areas as follows:

***Recreational and Marine Commercial.*** *It is the intent of this designation to guide development approvals on building sites on or near the bay in a manner that will encourage a continuation of marine-oriented uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor services, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites or near the bay. Uses permitted are as follows:*

- I. Permitted uses: highest priority uses, not requiring a use permit.*
  - A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.*
    - 1. Boat haul-out facilities*
    - 2. Commercial fishing facilities*
    - 3. Sport fishing establishments and fishing docks*
    - 4. Marinas*
    - 5. Marine construction*
    - 6. Boat rentals and charters*
    - 7. Retail marine sales*
    - 8. Marine service businesses*
    - 9. Dry boat storage*
  - B. Other permitted uses:*
    - 1. Marine-related offices where services are offered to the general public*
    - 2. Visitor-serving retail*
- II. Uses which require a Use Permit:*
  - A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.*
    - 1. Manufacturing of marine uses*
    - 2. New boat construction*

3. Marine service stations and gas docks
4. Yacht clubs

B. Other uses:

1. Social clubs
2. Commercial recreation
3. Drive-in facilities
4. Hotels and Motels
5. Restaurants

C. Uses which must be in conjunction with an incentive use occupying at least 40% of the site

1. General retail and service commercial uses
2. Professional and business offices
3. Light manufacturing

**Retail and Service Commercial.** Areas with this designation are to be predominantly retail in character, also accommodating some service office uses. It is the intent of this designation to provide contiguity of shopping and mutually supportive businesses. Uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior citizen housing facilities. Office uses which do not provide services directly to the public shall be prohibited on the ground floor, but may be permitted on the second level or above where the ground level is occupied by a primary uses. Separate “corporate” type offices are not allowed in these areas.

The “Central Newport/Lido” section beginning on page 51 states, in pertinent part:

**Cannery Village.**

*...In order to maintain the particularly “marine” atmosphere of the area, careful consideration should be given to all proposals for new development, especially in waterfront areas.”*

*On all commercial lots, residential uses are permitted on the second floor or above where the ground floor is occupied by another permitted use up to a total floor area ratio of 1.25.*

Both the Coastal Act and the City’s certified LUP contain policies which encourage commercial development that will serve the general public and enhance public opportunities for coastal recreation. Section 30222 of the Coastal Act requires visitor-serving commercial recreational facilities to have priority over private residential, general industrial, or general commercial development on private land suitable for such development. Additionally, the LUP contains policies that encourage the continuation of marine-oriented uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor services, and encourage physical and visual access to the Newport Bay.

The applicant proposes the construction of 22 new mixed-use structures—4 on waterfront lots and 18 on inland lots. As described previously, the waterfront lots are designated Recreational and Marine Commercial (RMC) and the inland lots are designated Retail and Service Commercial (RSC). The RMC designation is applied to waterfront commercial areas where the City wishes to preserve and encourage development that facilitates marine commercial and visitor-serving uses. The City’s LUP allows residential development to be sited above permitted uses on the ground

floor in both the RMC and RSC designated areas. On the waterfront lots (designated RMC), the applicant intends to provide marine commercial uses consistent with the requirements of the City's Specific Plan and of the certified LUP. As stated in the applicant's correspondence,

*"Our goal is to continue the marine commercial uses that are historically and currently operating within the Cannery Village. Examples of current operations include yacht brokerage and financing operations, charter and sport fishing operation, marine storage facilities, marine fabrication and service facilities, light boat storage and repair, marine drafting and engineering services, sail fabrication, and marine sail fabrication."*

The applicant has developed an interest list of prospective buyers for the 22 mixed-use structures. Approximately twenty percent are inquiring about the waterfront structures. Some examples of the stated interests for these 4 sites are yacht brokers and marine financing, marine charters, and a custom fishing lure manufacturer. Regarding the 18 inland sites, the applicant has received interest from artists and gallery owners, clothing designers with a retail component to their business, a marine illustrator, yacht broker, internet web application developer, graphic designer, antique dealer, arts & crafts and curio shop owner, retail furniture manufacturer, children's bookseller, marine canvas fabricator and custom sail maker, and a maker of custom yacht window coverings. Not all of the prospective buyers are proposing to operate businesses that provide goods or services directly to the public, as specified by the LUP. If other forms of commercial development are allowed, the intent of the LUP to provide marine and visitor-serving uses will be compromised. To ensure that priority land uses area provided, all land owners must be required to provide marine-related and/or visitor serving development on the ground floor.

The applicant contends that local planning and enforcement measures will ensure conformance with the land use requirements of the RMC and RSC areas. The applicant states in a letter (Exhibit 5), *"Adequate controls within the Cannery Village Specific Plan will assure conformity to the City use permit which mandates marine commercial uses on the waterfront lots. Ordinary zoning controls and enforcement measures by the City of Newport Beach will also monitor conformity."* The City's local approval of the currently proposed project specifies allowable uses on the ground floor of each structure and finds the project consistent with the requirements of the LUP, Specific Plan and zoning code.

To ensure compliance with the land use restrictions imposed through the certified LUP, the Commission imposes Special Condition 1. This condition requires that all of the proposed structures provide commercial development consistent with the allowable land uses listed in the certified LUP. The 18 interior lots will be required to comply with the RSC designation and the waterfront lots will be required to comply with the RMC designation. The condition further specifies that future improvements, including change in use or intensity of use, are required to be reviewed by the Commission. This condition is also necessary to maintain adequate parking, as will be discussed in the following section.

The viability of commercial development often depends on pedestrian traffic and visibility. The four structures located along the waterfront do not have store frontage on Lafayette Avenue. Instead, only the parking areas are visible from the street. The applicant contends that the waterfront buildings have been oriented so that the proposed marine commercial businesses have frontage on the water, where they will be the most visible to boaters along the Rhine Channel and to pedestrians walking along the newly created public walkway. Signage will be provided along the Lafayette-facing facade of the buildings that will inform passers-by of the commercial development located along the waterfront. Despite their lack of street front store frontage, the waterfront commercial spaces will attract customers traveling along the Rhine Channel by boat and walking along the public accessway. In addition, signage placed on the street-facing side of the building

will inform drivers that commercial development exists along the waterfront portion of the properties. Consequently, the ground floor of the Lafayette Avenue buildings will provide a viable, high priority use.

#### Conclusion

The applicant proposes to construct 22 mixed-use structures with commercial development on the ground floor and residential development above. Locating the retail and service commercial development on the first floor is consistent with the Coastal Act since it places higher priority use on the more easily accessible lower floor and the lower priority use on the upper floors. Therefore, the Commission finds the project, as conditioned for compliance with the land use requirements of the certified LUP, consistent with Section 30222 of the Coastal Act.

#### **C. Parking**

Section 30252 of the Coastal Act states in pertinent part:

*The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...*

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30210 of the Coastal Act requires the provision of maximum public access. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Until adequate public transportation is provided, all private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

The project site is on the Balboa Peninsula, which is a major tourist area in the City of Newport Beach. Further, the project is located in the Cannery Village/McFadden Square Specific Plan area, which has been designated for a mixture of retail and commercial uses to promote marine and visitor serving commercial types of development. The project site lies east of Newport Boulevard, which is a major arterial route for public access to the coastal opportunities located on the Balboa Peninsula, and is approximately 2000 feet from the ocean and 500 feet from the West Lido Channel. The Cannery Village area is not typically used for parking by coastal visitors due to its distance from the sandy beach and other tourist destinations. However, on peak summer days, the public parking lot and metered parking are used to accommodate overflow.

#### Proposed Uses and Parking Evaluation

The applicant proposes two types of land uses on-site, commercial and residential. The commercial component would consist of Recreational and Marine Commercial (RMC) on the waterfront lots and Retail and Service Commercial (RSC) on the interior lots. As discussed in the previous section of the staff report, a variety of commercial uses are anticipated. Allowable commercial uses of the interior lots include, but may not be limited to: professional or technical offices that provide direct services to the public (i.e. accountants, architects, realtors, travel agencies, etc.) and general retail. Various marine related and/or visitor-serving uses are allowed on the waterfront lots, including but not limited to, boat sales and marine service businesses. As proposed, the second and third story residential development is permitted in conjunction with ground floor commercial uses. Based on the criteria the Commission generally applies, uses that provide direct service to the public, but which would not be permitted because they would establish

a more intensive use of the site, therefore requiring additional parking, include restaurants and doctor's offices.

#### Parking Standards

A total of 119 off-street parking spaces are provided to serve the proposed mixed-use development (75 for commercial and 44 for residential). The applicant has applied the City's parking standards for the currently proposed project. In the RSC district, the commercial office/retail uses are required to have 1 parking space per each 250 square feet of commercial space. In the RMC district, commercial spaces used for boat sales/rental/storage shall have 1 parking space per 1000 square feet of commercial space. The proposed commercial portion of the project is 17,109 square feet in size. Based on the City's standards, the project is required to provide 59 parking spaces to serve the commercial development. The applicant proposes to provide 75 spaces.

For general retail uses, the Commission's regularly used parking standard is 1 space for every 225 square feet of gross floor area. For office uses, the Commission's regularly used parking standard is 1 space per each 250 square feet of gross office space. The project allows for a combination of retail and office uses. Based on the standard of 1 space per 250 square feet of gross office space, the parking demand totals 69 spaces. Based on the standard for retail, the project requires 76 spaces, one more than provided. As such, the project is deficient one parking space if solely retail uses occupy the ground floor of each structure.

The Commission has routinely imposed the standard of two (2) parking spaces per residential unit. The project includes 44 spaces, 2 for each of the 22 units. The parking provided is consistent with the Commission's regularly used parking standard for residential development.

#### Parking Adequacy

When determining local parking requirements, the Commission uses its regularly imposed standards and local parking standards as guidance. The Commission also relies on site-specific parking analyses or studies. In this case, a parking study prepared by Kimley Horn dated January 2002 was submitted. The report addresses the project's impact on the on-street parking in the project area. The report states that peak on-street demand currently represents approximately 50% occupancy of the parking supply in the vicinity of the project. According to the report, the proposed project would result in a net loss of 5 on-street parking spaces through the creation of new driveway curb cuts. However, subsequent City review and modification to the project design resulted in a loss of 5 additional on-street spaces. As such, a total of 10 on-street parking spaces will be lost after project completion.

The Kimley Horn report found that, using the worst-case assumption for commercial demand, the peak parking demand for the Cannery Lofts commercial/office uses is projected to be 50 spaces. As stated previously, the applicant proposes to provide 75 off-street spaces. Consequently, the consultant asserts that on-street parking will not be utilized to accommodate the demand of the proposed commercial development. The report concludes that the loss of 5 on-street parking spaces will not significantly impact the accessibility of public parking in the project area. However, whether or not the Commission would agree, combined with the potential implementation issues of the tandem parking design, the Commission finds that the parking loss is a substantial detriment to coastal access. While the quantity of parking spaces is adequate under a standard parking configuration, the usable parking given the current configuration is deficient.

#### Tandem Parking and Signage Plan

Though the parking proposed by the applicant is numerically adequate, there is a concern regarding the feasibility of the parking arrangement. The proposed parking management system relies on tandem parking spaces for the commercial uses, which makes ingress and egress difficult. (Residential parking is provided in separate garages.) For example, the proposed visitor parking spaces provided on the alleys and on 30<sup>th</sup> Street will block the ability of the vehicles to exit



or enter the employee space and the visitor/employee space provided within the interior parking area. Consequently, employees and potential customers may be hesitant to pull forward to the more interior parking space for fear of getting “trapped.” Additionally, the interior spaces do not accommodate disabled parking, as they are narrower than the outer spaces.

The applicant has submitted a parking management program prepared by Tanner Hecht Architecture, which addresses the potential conflict between the tandem parking design and disabled access parking. As described in the plan,

*“[t]he lots in questions have the accessible stall entered directly from 30<sup>th</sup> Street, which is the most visible parking place for visitors. The commercial visitor stalls will be the two outer stalls (directly off the street and alley) and the inside tandems will be reserved for the employee parking and also available as additional commercial visitor parking. The first visitor to park in the spaces entered from 30<sup>th</sup> Street stall would be required to pull to the forward stall, with the exception of disabled visitors. All visitors would be required to check in with the commercial tenant, of which there is only one per lot and is located directly adjacent to the commercial visitor parking stalls. If a disabled person parks first, and blocks the use of the front stall, there will be an additional space for another commercial visitor at the rear of the building. Wall signage mounted on the wall at the front of the accessible stall would, as an example, include the following text:*

**PRIVATE PARKING FOR THIS BUSINESS:  
ALL VISITORS PULL FORWARD TO FRONT STALL, IF AVAILABLE  
EXCEPTION PER TITLE 24. CHECK IN WITH COMMERCIAL TENANT.  
ADDITIONAL PARKING AVAILABLE OFF OF ALLEY AT REAR. VIOLATORS  
WILL BE TOWED. FOR TOWED VEHICLES CALL 644-3677.”**

Although the applicant has made efforts to mitigate potential parking conflicts resulting from the tandem design, the parking plan must be improved through provision of additional parking and revisions to the parking management plan. As proposed, the on-site tandem parking spaces will be avoided by customers that are wary of being blocked in or do not want to check in with individual business owners. The system also presents a problem in the event that one commercial space attracts a disproportionate amount of customers. Each commercial space only accommodates four parking spaces—three for potential customers and one for the employee. If more than three customers arrive at once, the parking would be inadequate. Customers and employees will choose to park on the street or within a nearby municipal lot. Public parking will be adversely impacted as a result. Therefore, overflow parking is necessary.

To assure that the parking arrangement is rational and that customers of the proposed development will have adequate, usable parking available, the applicant must submit a revised parking management plan that does the following: 1) clearly depicts through signage the availability of, and restrictions on, customer parking and 2) designates additional off-street parking spaces within a separate lot. A separate lot must be provided to serve patrons of the Cannery Lofts development and mitigate the loss of 10 on-street parking spaces. The applicant shall utilize the southwest lot on the corner of Lafayette and 30<sup>th</sup> Street to accommodate the additional parking spaces. Only parking and landscaping shall be allowed at this site. The designated lot (S8) is located adjacent to the street end improvements at 30<sup>th</sup> Street and is centrally located for easy access to all of the new commercial uses within the Cannery Lofts development (Exhibit 3, page 3). The lot is 3228 square feet in size and approximately 91' deep. At least 5 parking spaces can be accommodated at this site in a standard (non-tandem) configuration, thereby helping to mitigate the loss of 10 on-street spaces and the possibility that overflow of patrons to one or more of the 21 commercial businesses might take up some of the remaining on-street parking. Pursuant to Section 30.15.020 of the City's Zoning Code, commercial parking facilities are allowed in the RSC zone pursuant to a use permit issued by the Planning Director.

To minimize adverse impacts to public access resulting from a lack of public parking, the Commission imposes Special Condition 2, which requires the submittal of a revised parking management plan. Special Condition 2 requires the applicant to record a deed restriction that incorporates the aforementioned restriction on Lot S8. A common owner, Cannery Lofts LP, owns all of the subject property and has applied for a single, coordinated development program for the entire area with the intent of selling the 22 individual lots. The parking lot at lot S8 must be deed restricted to ensure that adequate parking to serve the development is provided in perpetuity and that future owners are made aware of the development limitations on that lot. The applicant must also submit new project plans reflecting the deletion of the structure at lot S8 and the creation of the new parking lot.

In addition to the creation of a new parking lot, signage of the proposed tandem spaces at the remaining 21 lots will serve to facilitate on-site, off-street parking. A specific signage plan that informs the public of parking availability at each of the sites must be incorporated. To minimize adverse impacts, employees should be instructed to use the parking spaces within the interior areas during normal business hours so they do not block customers. Signage should be placed on the exterior walls of the building (frontage street and alley) to inform customers where to park, the location of overflow parking and at what times the parking restrictions are in place. The applicant may also propose to designate parking spaces for employees and customers by stenciling labels on the pavement.

#### Special Conditions

To guarantee that adequate and useable parking as proposed by the applicant is consistent with Section 30252 of the Coastal Act, the Commission finds it necessary to impose two special conditions. Special Condition 1, introduced in the previous section, requires that any future development which changes the intensity of use of the site or which changes the use of the site requires an amendment to this permit or a new coastal development permit. This type of special condition is consistent with those imposed in previous permits issued in the area. The Commission imposed Special Condition 1 for similar developments, such as 5-01-104 (Fluter), 5-99-379 (Blurock), 5-98-177 (Finnemore), 5-98-048 (La Quinta Homes), and 5-97-249 (Weeda).

Special Condition 2 requires the applicant to submit a revised parking management plan for the review and approval of the Executive Director. The plan must include the creation of a new deed restricted parking lot to serve the demand of the Cannery Lofts development and to mitigate for the loss of 10 on-street spaces. The additional parking lot must be sited at Lot S8, as shown in Exhibit 3, page 3. The applicant must also submit new project plans reflecting the deletion of the structure at lot S8 and the creation of the new parking lot. The parking plan must show at least 5, non-tandem parking spaces provided at the new lot. The revised parking plan must also include a signage plan that clearly identifies "employee only" and customer parking available at each of the 21 mixed-use buildings. This special condition also requires employees to park in the spaces closest to the structure.

Thus, only as conditioned to obtain Commission approval for any future improvements to the property and to provide a revised parking plan with deed restricted off-street parking lot, does the Commission find that the proposed development would be consistent with the development and public access policies of the Coastal Act.

#### **D. Scenic and Visual Resources**

Section 30251 of the Coastal Act states, in relevant part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural*

*land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...*

Coastal views are discussed on page 28 of the LUP as follows:

*Where coastal views from existing roadways exist, any development on private property within the sight lines from the roadway shall be sited and designed to maximize protection of the coastal view. This policy is not intended to prohibit development on any site.*

#### Height

The project will result in the construction of 22 new three-story, mixed-use structures within the Cannery Village neighborhood. The height of the structures will exceed the City's 26-foot standard height limit by 7 feet. The structures will reach a height of approximately 33' with mechanical equipment. The City allows for a height increase up to 35 feet if certain criteria are met. The project was granted a use permit to allow the height exception because the design includes setbacks, open terraces, open balconies and parking breezeways. The City found that these features counterbalanced the height increase. Therefore, the project was found to meet the requirements for a height exception when approved at the local level. The LUP does not contain height restrictions. As such, the Commission's review of the proposed building heights is based solely on consistency with Section 30251 of the Coastal Act.

The height of the new structures will be slightly taller than those in the surrounding area. The majority of development consists of two stories structures under 30' high. The exception is the Cannery Restaurant located directly north of the Lafayette lots, which is approximately 40' high. In addition, the Commission approved construction of a 33' high mixed-use structure at 427 and 429 30<sup>th</sup> Street and 3009 Villa Way pursuant to CDP 5-00-056.

As demonstrated on Exhibit 3, pages 7 & 8, the building mass of the proposed structures has been designed to offset the undesirable effects typically associated with taller structures. Variations in the articulations of the structures and incorporation of terraces will reduce the building mass. In addition, rooflines will be lower along 30<sup>th</sup> Street than along the rear alleys. The Commission finds the height of the proposed structures will not create an adverse impact on scenic resources in the subject area.

#### Views

Construction of the four waterfront buildings will obstruct a view of the Rhine Channel (Exhibit 6). As such, the project will create a new adverse visual impact and obstruct views currently available from a public roadway. Although the project will obstruct existing views, the applicant's proposal includes view corridors between the buildings and at the new park at the end of 30<sup>th</sup> Street. The view corridors, referred to as "open breezeways," are 3' and 6' wide, as shown in Exhibit 3, page 6. The project also includes the creation of a new 6' wide public walkway along the waterfront. Therefore, views of the water will be provided from the walkway and public park. To ensure maximum public viewing opportunities, it is necessary to require that these views be maintained in an unobstructed manner.

Although the applicant proposes the creation of "breezeways" between the channel-fronting structures, a "Metal Trellis" is proposed along the frontage of these structures. The trellis partially obstructs the proposed breezeways. A note on the project plans indicates that the trellis will be >50% open. The proposed trellis will affect the view of the Rhine Channel. In addition, the proposed "Breezeway Security Gate" located in the center of the waterfront lots will obstruct public views if constructed of a solid material. Similarly, the proposed courtyard gates depicted on the project plans will obstruct views of the water and the marine commercial development when closed,

or rolled down. The applicant indicates that the gates will remain open during business hours. However, there is no condition in the City's approval that specifies that requirement.

Section 30251 requires development to be "*sited and designed to protect views to and along the ocean and scenic coastal areas.*" The City's coastal view policy is not intended to prohibit development on any site. However, the project can be redesigned to maximize views where possible. As such, the Commission imposes Special Condition 5, which requires a revision of the elevation drawing of the Lafayette Street buildings (Sheet A8) to increase public views (Exhibit 3, page 6). The revised drawings must demonstrate either removal of the trellis from the project design or creation of a 95 percent transparent trellis. The drawings must also specify that the breezeway security gate is a transparent material. Lastly, the special condition requires that the courtyard gates remain open during business hours.

The proposed project will obstruct views to the Rhine Channel. However, the applicant has lessened the affect of the view blockage by incorporating view corridors between the buildings and provides a public viewing opportunity via the new public walkway and street end park. In addition, the project has been conditioned for removal or redesign of the trellis walls. Therefore, the Commission finds the proposed development, as conditioned, to be consistent with Section 30251 of the Coastal Act.

#### Community Character

A community interest group known as ORACLE (Owners and Residents Against Cannery Lofts Expansion) have identified concerns in a letter received by Commission staff on June 18, 2002 relating to visual resources, public access, recreation, water quality, traffic and parking (Exhibit 7). The issues relating to public access are discussed in Section F of the current staff report. Water quality is discussed in Section E. Parking is discussed in Section C and views have been addressed previously in the current section. Community character and design issues are discussed below.

The Cannery Village area is made up of a mix of older marine industrial and commercial uses. The majority of structures are two-stories high, but one and three-story structures also exist. The architectural styles vary from building to building. (Photos of surrounding development are provided in Exhibit 8.) Consequently, the character of the area is eclectic and cannot be described as having a cohesive, uniform style. In the proposed project, a variety of façade designs will be applied to each storefront. The applicant indicates that the heights and building materials of each structure will be varied in the proposed development. In addition, the land uses will vary among the structures. As such, the proposed project is consistent with the diverse character of the surrounding area.

Opponents to the project contend that the project is not consistent with the Cannery Village/McFadden Square Specific Plan. As stated previously, the Specific Plan is a locally adopted document that has not been certified by the Commission as part of the LUP. The Specific Plan has a recommended architectural theme that is "*reminiscent of the previous use of the area, and can provide a continuity throughout the area while preserving the variety and individuality of uses that gives the area its charm.*" The cannery theme includes the use of nautical and marine elements, the use of corrugated metal building materials and the attractive expression of mechanical equipment. Some members of a public state that the proposed architectural theme is repetitive and not consistent with the design intent of the Specific Plan. The City has found that the project conforms to the architectural theme of a cannery area with its design and use of encouraged materials. The applicant submitted a material board approved by the City that includes corrugated metal, plaster, aluminum storefront windows, teak wood panels, and stainless steel cable railings.

The Commission recognizes that issues of design are largely subjective. The Commission does not generally question design decisions which are local in nature. In addition, regardless of any issues of conformity with advisory, non-binding guidelines contained in the Cannery Lofts Specific Plan, the project plans are consistent with the general community character, as well as with the development standards and policies of the certified LUP. The Commission therefore finds that the design is visually compatible with the character of surrounding areas, as required by Coastal Act Section 30251.

#### Conclusion

For the reasons discussed in this section, the Commission finds the proposed project, as conditioned, to be consistent with Section 30251 of the Coastal Act because (1) there is no adverse impact on scenic resources, (2) coastal views are maintained, and (3) the development is compatible with community character.

#### **E. Water Quality**

Section 30230 of the Coastal Act states, in pertinent part:

*Marine resources shall be maintained, enhanced, and where feasible, restored.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30232 of the Coastal Act states, in pertinent part:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include the Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water quality should be examined to assure that potential impacts are minimized.

As discussed previously, the applicant is proposing to carry out development activities immediately southwest of the Rhine Channel, an arm of the Newport Harbor. The project involves new construction, street modifications and drainage improvements within a 1.4-acre area (Exhibit 3,

page 9 & 10). As such, the proposed project has the potential to affect water quality both during construction and after construction.

#### Construction BMPs

Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion or which may be discharged into coastal waters via runoff carried by the storm water system would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition 3 outlines construction-related requirements to provide for the safe storage of demolition materials and the safe disposal of construction debris. The condition ensures that debris will not be allowed to enter the Rhine Channel or Newport Harbor.

#### Post Construction BMPs

After construction of the Cannery Lofts development, water from the project site lot will flow into the City of Newport Beach's storm drain system and will ultimately drain to the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

In order to minimize adverse impacts to water quality, the applicant has incorporated protective measures into the project design through a "Runoff and Water Quality Management Plan for Cannery Lofts." These measures include street sweeping, catch basin inspection and cleaning, runoff minimizing landscape design and onsite runoff collection and filtration systems.

The total existing runoff emanating from the subject property is based on impervious surfaces comprising over 72,000 square feet (including 30<sup>th</sup> Street). Prior to demolition of the structures and parking areas approved pursuant to 5-02-096, approximately 329 square feet of the entire development site was landscaped and pervious. Redevelopment of the site will result in a reduction of the impervious surfaces previously existing at the project site. Prior to demolition, the structures and parking areas contained little, in any, landscaped areas. Upon completion of the project, the site will contain approximately 60,200 square feet of impervious surfaces, reducing the impervious surfaces by over 12,000 square feet. In order to further reduce the amount of surface runoff, the applicant proposes to include approximately 18,000 square feet of planting, turfblock and permeable hardscape in the areas surrounding the structures. The turfblock and hardscape areas will be constructed with a percolation base and substrate that will filter on-site runoff, including roof runoff. Low flows will percolate into the substrate, while higher flows will drain through sub drains into a new drainage system in 30<sup>th</sup> Street. According to the applicant, the proposed reconstruction of 30<sup>th</sup> Street is envisioned to incorporate a swale at the centerline of the street (replacing the existing curb face surface flow drains) with a trench drain to divert water within the street to the new storm drain. This new storm drain would then be directed to a cleaning chamber (Vortechs Storm Water Treatment System, or approve equal) prior to discharge into the public storm drain system currently tributary to Newport Bay at the Rhine Channel.

Although the Runoff and Water Quality Management Plan submitted by the applicant contains measures to minimize adverse impacts to water quality, specific detail and sizing information has not been provided. Additional post-construction information is required. As such, the Commission

imposes Special Condition 4, which requires submittal of a Water Quality Management Plan (WQMP) that includes supporting calculations, written descriptions, and appropriate plans for the post-construction project site.

Only as conditioned for implementation of construction BMPs and submittal of a WQMP does the Commission find that the proposed development consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

**F. Public Access and Recreation**

Section 30210 states, in pertinent part:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 states, in pertinent part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*

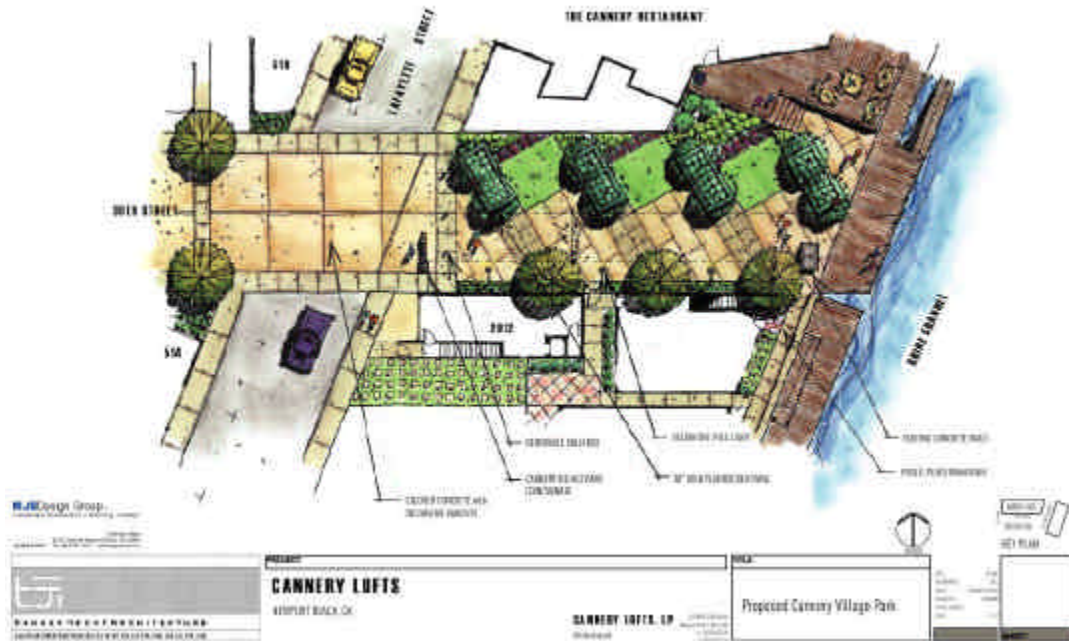
*(2) adequate access exists nearby,*

Section 30213 states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

In addition to the policies cited above, Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development, a portion of which occurs between the nearest public road and the sea, includes the construction of 22 new commercial and residential structures. The four lots located along Lafayette Avenue are adjacent to the Rhine Channel. However, no access to the water is currently provided through the applicant's property. This segment of the property is now being utilized as an additional storage yard and service facility by Shock Boats. The nearest public coastal access to the Rhine Channel is available at the corner of Lido Park Drive and Lafayette Avenue, immediately northeast of the project site.

Public access is being created as part of this project, as illustrated in the graphic on the following page. A 6-foot wide public walkway along the bayfront within the 10-foot setback between the waterfront buildings and the bulkhead is part of the proposed project. The walkway is part of the City's effort to create a public walkway along the waterfront. As each waterfront lot recycles, a new segment of the 6' wide walkway is provided in conjunction with the new development. In addition, vertical public access will be provided via an improved public street end at 30<sup>th</sup> Street, located immediately north of the 4 waterfront lots and south of the Cannery Restaurant, a popular visitor destination.



Parking to serve the waterfront lots is available at the ground floor of each of the four sites. In addition, parking for the entire Cannery Lofts development will be provided in a newly created parking lot at the southwest corner of 30<sup>th</sup> Street and Lafayette, as required pursuant to Special Condition 2. As such, the project provides public access opportunities and adequate parking to serve new visitor serving commercial development.

Although the applicant has indicated that signage will be provided to identify the new public walkway and park at the end of 30<sup>th</sup> Street, a signage plan has not been submitted for Commission review. Special Condition 6 requires the applicant to submit a signage plan informing the public of the public access opportunities available via the street end at 30<sup>th</sup> Street. The special condition requires the placement of signage that clearly states that the public may utilize the newly created facilities (public park and walkway). The Commission finds that the proposed development, as conditioned for additional signage, is consistent with Section 30212 of the Coastal Act.

### **G. Land Use Plan**

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a), the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a local coastal program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan (LUP) was effectively certified on May 19, 1982. The proposed development, as conditioned, is consistent with the policies of the certified Land Use Plan and Chapter 3 of the Coastal Act, specifically those relating to land use, coastal views and public access (discussed in Sections B, D and E). Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).



**H. California Environmental Quality Act (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located within a primarily commercial area. Development exists on and around the subject site. The proposed development has been conditioned, as follows, to assure the proposed project is consistent with policies of the Coastal Act: 1) acknowledgement of land use restrictions through an future improvements condition; 2) submittal of a revised parking management plan, 3) submittal of a Construction Best Management Practices Plan, 4) submittal of a Water Quality Management Plan; 5) preservation of public views and 6) submittal of a public improvement signage plan.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.